

**Exhibit 5**

**Proof of Claim**

The Debtor has listed your claim as Contingent, Unliquidated, and Disputed on Schedule F as a General Unsecured claim in the amount of \$0.00. You MUST timely file a Proof of Claim or you will be forever barred from recovery.

B 10 Modified (Official Form 10) (12/11)

UNITED STATES BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF NEW YORK		PROOF OF CLAIM	
Name of Debtor: <b>GMAC Mortgage, LLC</b>		Case Number: <b>12-12032</b>	
NOTE: This form should not be used to make a claim for an administrative expense (other than a claim asserted under 11 U.S.C. § 503(b)(9)) arising after the commencement of the case. A "request" for payment of an administrative expense (other than a claim asserted under 11 U.S.C. § 503(b)(9)) may be filed pursuant to 11 U.S.C. § 503.			
Name of Creditor (the person or other entity to whom the debtor owes money or property): <b>Wekesa O Madzimoyo vs The Bank of New York Mellon Trust Company NYBMT NA formerly known as The Bank of New York et al</b> Name and address where notices should be sent: <b>NameID: 10995364</b> <b>Wekesa O Madzimoyo vs The Bank of New York Mellon Trust Company NYBMT NA formerly known as</b> <b>The Bank of New York et al</b> <b>852 BRAFFERTON PL</b> <b>STONE MOUNT, GA 30083</b>		<input type="checkbox"/> Check this box if this claim amends a previously filed claim.  <b>Court Claim</b> Number: _____ (If known)  Filed on: _____	
Telephone number: <b>404-201-2356</b>	email: <b>wekesa@gmail.com</b>		
Name and address where payment should be sent (if different from above): <div style="text-align: center;"> <input checked="" type="checkbox"/> Date Stamped Copy Returned  <input type="checkbox"/> No self addressed stamped envelope  <input type="checkbox"/> No copy to return             </div>		<input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to this claim. Attach copy of statement giving particulars.	
Telephone number: _____	email: _____		
1. Amount of Claim as of Date Case Filed: <b>\$ 2,275,000.00</b> If all or part of the claim is secured, complete item 4. If all or part of the claim is entitled to priority, complete item 5. <input type="checkbox"/> Check this box if the claim includes interest or other charges in addition to the principal amount of the claim. Attach a statement that itemizes interest or charges.		5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any part of the claim falls into one of the following categories, check the box specifying the priority and state the amount.  <input type="checkbox"/> Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B). <input type="checkbox"/> Wages, salaries, or commissions (up to \$11,725*) earned within 180 days before the case was filed or the debtor's business ceased, whichever is earlier - 11 U.S.C. §507 (a)(7). <input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. §507 (a)(5). <input type="checkbox"/> Up to \$2,600* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. §507 (a)(7). <input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. §507 (a)(8). <input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. §507 (a)( ).  Amount entitled to priority:  \$ _____  * Amounts are subject to adjustment on 4/1/13 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.	
2. Basis for Claim: <b>Wrongful Foreclosure, Bad Faith, Fraud</b> (See instruction #2) <b>Civil Action File # 09CV9136-10</b>			
3. Last four digits of any number by which creditor identifies debtor: _____	3a. Debtor may have scheduled account as: _____ (See instruction #3a)		3b. Uniform Claim Identifier (optional): _____ (See instruction #3b)
4. Secured Claim (See instruction #4) Check the appropriate box if the claim is secured by a lien on property or a right of setoff, attach required redacted documents, and provide the requested information. Nature of property or right of setoff: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other Describe: Value of Property: \$ _____ Annual Interest Rate _____ % <input type="checkbox"/> Fixed <input type="checkbox"/> Variable (when case was filed) Amount of arrearage and other charges, as of the time case was filed, included in secured claim, if any: \$ _____ Basis for perfection: _____  Amount of Secured Claim: \$ _____ Amount Unsecured: \$ _____			
6. Claim Pursuant to 11 U.S.C. § 503(b)(9): Indicate the amount of your claim arising from the value of any goods received by the Debtor within 20 days before May 14, 2012, the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim. \$ _____ (See instruction #6)			
7. Credits. The amount of all payments on this claim has been credited for the purpose of making this proof of claim. (See instruction #7)			
8. Documents: Attached are redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. If the claim is secured, box 4 has been completed, and redacted copies of documents providing evidence of perfection of a security interest are attached. (See instruction #8, and the definition of "redacted".) DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING. If the documents are not available, please explain:			
9. Signature: (See instruction #9) Check the appropriate box. <input checked="" type="checkbox"/> I am the creditor. <input type="checkbox"/> I am the creditor's authorized agent. <input type="checkbox"/> I am the trustee, or the debtor, or their authorized agent. <input type="checkbox"/> I am a guarantor, surety, indorser, or other codebtor. (Attach copy of power of attorney, if any.) (See Bankruptcy Rule 3004.) (See Bankruptcy Rule 3005.)  I declare under penalty of perjury that the information provided in this claim is true and correct to the best of my knowledge, information, and reasonable belief. Print Name: <b>Wekesa O. Madzimoyo</b> Title: <b>Plaintiff - 09CV9136-10</b> Company: _____ Address and telephone number (if different from notice address above): _____  Telephone number: _____ Email: _____			

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 COURT USE ONLY

IN THE SUPERIOR COURT FOR THE COUNTY OF DEKALB  
STATE OF GEORGIA

CIVIL ACTION FILE#

No. 09CV9136-10

Wekesa O. Madzimoyo,

-Plaintiff

}

PLAINTIFF DEMANDS TRIAL  
BY JURY

v.

}

THE BANK OF NEW YORK  
MELLON TRUST COMPANY (NYBMT),

}

NA., formerly known as The Bank of New }  
York Trust Company, N.A., JP MORGAN }  
CHASE BANK, NA, GMAC MORTGAGE, LLC, }  
MCCURDY AND CANDLER, LLC }

and ANTHONY DEMARLO, Attorney

-Defendants

}

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**CONSOLIDATED AND AMENDED COMPLAINT**

**WRONGFUL FORECLOSURE, BAD FAITH, FRAUD (ASSIGNMENT  
AND TITLE), QUIET TITLE/SLANDER OF TITLE, CLAIM FOR  
DAMAGES, LITIGATION FEES AND COSTS**

Plaintiff Wekesa O. Madzimoyo (Plaintiff, Madzimoyo) brings this action  
against the above-named Defendants consolidating for wrongful foreclosure,

bad faith, assignment and title fraud, quiet title / slander of title and claim for damages, litigation fees and costs.

This amendment comes now to consolidate the claims and existing orders of the two cases No. 09CV9136-10 and No.11CV9150-10 by a Consent Order and signed by DeKalb County Superior Court Judge Tangela Barrie on March 26, 2012.

### **JURISDICTION AND VENUE**

1. This property which is the subject of this lawsuit is located at 852 Brafferton PL, Stone Mountain, DeKalb Co, GA 30083, therefore jurisdiction is proper in this case.
2. Venue is proper in this case because this is a case involving real property and equity thereof.

### **FACTS**

3. The Plaintiff, Wekesa Madzimoyo signed a security deed with FT MORTGAGE COMPANIES dba EQUIBANK MORTGAGE CORPORATION on March 23<sup>rd</sup>, 1999 which was recorded in the office of the clerk of superior court of DeKalb County.

4. The Plaintiff assumed over the years that the changing of servicers, mortgage lenders, and title and security deed transfers and assignments, state recording procedures had been lawfully and properly executed and filed.
5. After having been approved for a loan modification by HomeComings Financial in February 2009, the Plaintiff desired to seek better modification terms by negotiating with his true lender (*secured creditor*).
6. Therefore, he started a documented exchange (via certified letters and return receipts) with the Defendants asking them to clarify their standing as secured creditor, servicer, agent, attorney, debt collectors, investor, trustee, attorney-in-fact or otherwise relative to the subject property.
7. The Plaintiff was / is not in default on his mortgage obligation.
8. When Defendants refused to adequately and lawfully document their standing, the Plaintiff became suspicious.
9. Fearing double jeopardy -- that he may be paying the wrong party, and that he unwittingly had become part of a mortgage scam -- the Plaintiff began to lawfully withhold payments pending legal validation of Defendants' standing in his mortgage loan.

10. From April through June, 2009 - the Plaintiff repeatedly asked the Defendants to validate their standing as required by Federal and Georgia law.
11. On July 3<sup>rd</sup>, 2009 Defendant Anthony DeMarlo of McCurdy and Candler mailed to the Plaintiff a NOTICE OF FORECLOSURE SALE (See EXHIBIT 1). GMAC was noted as the Servicer; The Bank of New York Mellon Trust Company, National Association fka The Bank of New York Trust Company, N.A. as successor to JPMorgan Chase Bank N.A. Trustee for RAMP 2006 RP2 (NYBMT) was noted as Creditor.
12. The Plaintiff opposed this action, first sending the Defendants a cease and desist order, then by filing an Emergency Petition for a Temporary Restraining Order in the DeKalb County Superior Court to force the Defendants to cease foreclosure activity and to clarify their standing to collect monies, and/or to foreclose on Plaintiff's home at 852 Brafferton Place, Stone Mountain, GA 30083.
13. DeKalb County Superior Court Judge, Tangela M. Barrie, examined over 50 pages of communication between Plaintiff Madzimoyo and the Defendants spanning months between April and July 2009.

14. Judge Tangle M. Barrie granted the Emergency Temporary Restraining Order on July 29<sup>th</sup>, 2009. Judge Barrie set a hearing date for August, 28<sup>th</sup>, 2011 and ordered the Defendants to “*Bring proper evidence of chain of title.*”(emphasis added)
15. Rather than doing so, the Defendants abused their Right of Removal and removed the **Emergency Petition** and the pending hearing to Federal District Court on August 27, 2009.
16. After many months and flurries of motions, where the Plaintiff attempted to have the case remanded back to State Court, the Defendants alleged that the Plaintiff’s pleadings were insufficient.
17. The Defendants were granted a dismissal (Judgment on the Pleadings) of the Plaintiff’s EMERGENCY PETITION FOR TEMPORARY RESTRAINING ORDER TO STOP FORECLOSURE by the United States District Court for the Northern District of Georgia, Atlanta Division on January 3, 2011.
18. The Plaintiff disagreed with the Court’s decision, and appealed that order to the 11<sup>th</sup> Circuit Court of Appeals.
19. While the Plaintiff-Madzimoyo awaited the Appellant Court ruling, the Defendants twice commenced new and unlawful foreclosure actions against

the Plaintiff's property at 852 Brafferton Place Stone Mountain, GA 30083.

These constituted the 2<sup>nd</sup> and 3<sup>rd</sup> commencements of wrongful foreclosure.

20. The Plaintiff filed Bankruptcy on April 4, 2011 seeking protection of the automatic stay to stop the second wrongful foreclosure.

21. On September 1, 2011, the Plaintiff filed another Complaint in the Superior Court of DeKalb County, GA (Same property, different causes of action.)

22. On September 2, 2011, the Plaintiff appeared before DeKalb County Superior Court Judge Michael Hancock seeking to enjoin the Defendants from yet another wrongful foreclosure on the Plaintiff's property while he awaited the 11th Circuit Court Ruling .

23. The Plaintiff pointed out the Defendants' foreclosure notice violations of OCGA 44-14-162.2 – accurate secured creditor. Hence Judge Hancock enjoined the Defendants from foreclosing on subject property.

24. On September 7<sup>th</sup>, the 11<sup>th</sup> Circuit Court of Appeals ruled for the Plaintiff vacating the District Court Order and ordering the District Court to remand the case back to DeKalb County, Superior Court - Judge Tangela Barrie's Court.



25. On October 5, 2011 Judge Tangela Barrie issued a “Continuance Order” stating “Defendants are restrained from foreclosing on the disputed property until this matter has been finalized or proper motions made.”
26. On October 12, 2011, the Federal District Court remanded the case back to DeKalb County Superior Court.
27. On March 26, DeKalb County Superior Court Judge Tangela Barrie signed a consent order consolidating the two cases.
28. In this consolidated action, Plaintiff Madzimoyo alleges that Georgia laws were violated, and that such violation has caused undue pain and suffering.

**COUNT I-WRONGFUL FORECLOSURE**

29. The contents of the paragraphs set forth above are incorporated here as if fully set forth herein.
30. The Plaintiff alleges that the Defendants are not the “secured creditors” and have violated O.C.G.A. § 44-14-162 (a-c) by commencing foreclosing on 852 Brafferton Place Stone Mountain, GA 30083 on July 3rd, 2009, February 14, 2011, and then again on July 25<sup>th</sup>, 2011.

31. While Defendants' July 3rd, 2009 NOTICE OF FORECLOSURE listed

Defendant NYBMT as the "creditor" (See July 3, 2009) Foreclosure Notice:

EXHIBIT 1), please note:

- a. Examination of the DeKalb County Real Estate Records on July 3, 2009 and months thereafter revealed that none of the Defendants had recorded any assignment of title as required by Georgia law.
- b. On February 18<sup>th</sup>, 2010, the Defendants did file an assignment in the DeKalb County Real Estate records purporting to establish the New York Bank of Mellon Trust Company, NA as the "secured creditor."
- c. Examination of the Defendants' assignment document (See EXHIBIT 2) indicates that the purported assignment occurred on February 8<sup>th</sup>, 2010 - a full seven months after foreclosure proceedings were commenced on July 3rd, 2009 and after the Defendants publicly advertised that the Plaintiff was in Default and his home was to be auctioned.
- d. **Note:** Plaintiff is not confusing a late filing date with execution of assignment date. The Document clearly shows that it was filed with the DeKalb County clerk on February 18<sup>th</sup>, 2010, while it was purportedly legally executed on February 8<sup>th</sup>, 2010.

32. According to **O.C.G. A. § 44-14-64 (a-c)** only the documented secured creditor/holder in due course can foreclose on subject property.

"The security instrument or assignment thereof vesting the **secured creditor** with title to the security instrument shall be filed prior to the

continues to retain remedies under the security deed so long as the debt evidenced by the note has not been satisfied.”)

34. "A cause of action for wrongful foreclosure starts at the point of the property being advertised for sale." *Sale City Peanut & Milling Company, Inc. v. Planters & Citizens Bank et al.*, 107 Ga. App. 463 (130 SE2d 518 (1963)).

35. This was also affirmed in *Morgan vs. Ocwen Loan Servicing, LLC*, United States District Court Judge, Amy Totenburg:

“... courts have recognized a cause of action for wrongful attempted foreclosure when a foreclosure action was commenced, but not completed, where plaintiffs have shown that a defendant “knowingly published an untrue and derogatory statement concerning the plaintiffs’ financial conditions and that damages were sustained as a direct result.”  
*Sale City Peanut & Milling Co. v. Planters & Citizens Bank*, 130 S.E.2d 518, 520 (Ga. Ct.App. 1963).

36. Defendants' most recent wrongful foreclosure action on Plaintiff's residence at 852 Brafferton Place Stone Mountain, GA 30083 on February 14<sup>th</sup>, 2011 forced the Plaintiff to file bankruptcy, and Defendants' July 25<sup>th</sup>, 2011 wrongful foreclosure action advertised for the third time in three years that his home would be auctioned on Sept. 6<sup>th</sup>, 2011.

37. **WHEREFORE**, Plaintiff respectfully requests that this Court enter a judgment against the DEFENDANTS as follows:

time of sale in the office of the clerk of the superior court of the county in which the real property is located.” O.C.G.A. § 44-14-162(b) (emphasis added).

“Notice of the initiation of proceedings to exercise a power of sale in a mortgage, security deed, or other lien contract shall be given to the debtor by the *secured creditor* no later than 30 days before the date of the proposed foreclosure.” O.C.G.A. § 44-14-162.2(a) (emphasis added).

33. United States District Court Judge Amy Totenberg in *Morgan vs. Ocwen Loan Servicing LLC*. not only concurs, but makes clear the Georgia Supreme Court view on this matter:

“Georgia law authorizes the secured creditor, the holder of the obligation, to exercise a power of sale. See O.C.G.A. §§ 44-14-162.2 (See #32 above.)

The Georgia Supreme Court has clearly indicated that the right to foreclose lies with the party that holds the indebtedness:

“Could there be a more conclusive defense to the foreclosure than that the party prosecuting it was not the holder of the debt or demand secured by the mortgage, which he failed to produce when called on, and offered nothing to show that he controlled it, or to explain why it was not forthcoming at the trial?”

*Weems v. Coker*, 70 Ga. 746, 749 (1883), cited by *Truitt v. Moister*, 11 B.R. 15 (Bankr.N.D. Ga. 1981); see also *Bowen*, 438 S.E.2d at 122; *Boaz*, 580 S.E.2d at 578; *Cummings v. Anderson*, 173 B.R. 959, 963 (Bankr. N.D. Ga. 1994) (foreclosure was null and void where the entity foreclosing did not have an actual assignment of the note and security deed), aff’d, 112 F.3d 1172 (11th Cir. 1997); *Weston v. Towson*, No. 5:04-CV-416, 2006 WL 2246206, at \*6 (M.D. Ga. Aug. 4, 2006) (“[T]he holder of the note

- a. That Plaintiff be granted compensatory damages against the Defendants NYBMT, JPMORGAN CHASE, GMAC, ANTHONY DEMARLO AND MCCURDY AND CANDLER in the amount of **\$500,000.00**
- b. That Plaintiff is granted such other and further relief as the Court deems just and proper.
- c. That Plaintiff have a Jury trial.

**Count II-BAD FAITH**

38. The Plaintiff's allegations of fraudulent assignments and bad faith stem from:

- a. The Defendant's refusal to provide complete "evidence of chain of title" as ordered by Judge Barrie 3 years ago;
- b. After-the fact, fraudulently signed assignment executed on February 8<sup>th</sup>, 2010;
- c. "Corrective Assignment of Security Deed" filed with the DeKalb County, GA Clerk of Superior Court on January 4<sup>th</sup>, 2011 (See EXHIBIT 3);
- d. The reliance on LPS (Lender Processing Services) or other "document handlers" instead of the expected due diligence expected of Defendants, and the Agents and Attorneys

39. Chain of Title and Securitization.

- i. The securitization of the Plaintiff's loan does not relieve the Defendants of following Georgia chain of title, assignment and recordation laws. In bad faith they have ignored them and have provided a Juan Antonio Aguirre's affidavit doesn't meet the transfer requirements of the loan pools, Georgia laws, or Judge Barrie's' order.
- ii. *"Separation of the note and security deed creates a question of what entity [has] the authority to foreclose..."* wrote, Federal Judge Amy Totenberg, United States District Court, Northern District of Georgia, in *Morgan v. Ocwen*. Judge Totenberg then turned to a description of the securitization process and described how securitized debt reached this bizarre state of affairs. Citing the distinguished former Dean of the Emory Law School, Frank S. Alexander, she wrote:
- iii. "In the securitization process, ownership of a note might be **transferred four or five times**, from the original lender to the issuer of the securities, through one or more special purpose entities, and finally to the trustee bank, which holds the legal interest in the note for the benefit of the securities holders
- iv. Whereas the cost-saving benefits to the mortgage banking industry ... are clear, its harmony with Georgia real estate law is less evident.

40. Judge Totenberg's description is supported by the Defendants' (GMAC, JP MORGAN CHASE, NYBMT) own Pooling and Service Agreement governing the trust that they claim holds Plaintiff's mortgage. That document's section entitled Transfer of Mortgage Loans (See EXHIBIT 4) diagrams the sequence of transfers of the mortgage loans that are included in the mortgage pool and says:

- a. “The *originators* will, on or prior to the closing date, sell the mortgage loans to the sponsor.”
- b. “The *sponsor* will...sell the mortgage loan to the depositor.”
- c. “The *depositor* will then transfer the mortgage loans to the trustee, on behalf of the trust that is the issuing entity.
- d. The *trustee* will accordingly own the mortgage loans for the benefit of the holders of the certificates.”

41. Please note a minimum of four mortgage loans sales/transfers are required for the Plaintiff’s mortgage loan to be successfully placed into the trust.

42. This means that according to Georgia law a minimum of four assignments with the proper endorsements and proper recording with the DeKalb County Clerk are required to have been made by the time the loan was securitized with “*First Bank of Chicago as Trustee*” which occurred 3 days after the Plaintiff closed on the loan with FT Mortgage according to the County records. (See EXHIBIT 5.)

43. Neither of these assignments is accounted for by the Defendants.

44. Instead, the Defendants submitted a Juan Antonio Aguirre affidavit (EXHIBIT 6) which simply contends that the Plaintiff’s mortgage loan “came to be held” by JPMorgan Chase, then NYMPT by merger and succession.

45. The Plaintiff alleges that the Aguirre affidavit was submitted in bad faith designed to defraud the Court and the Plaintiff.
46. Plaintiff specifically avers that a fraudulently created Assignment confers no rights at all, let alone the right to foreclose.
47. Indeed, O.C.G.A. § 44-2-43 declares ***“Any person who: (1) fraudulently obtains or attempts to obtain a decree of registration of title to any land or interest therein; (2) knowingly offers in evidence any forged or fraudulent document in the course of any proceedings with regard to registered lands or any interest therein; (3) makes or utters any forged instrument of transfer or instrument of mortgage or any other paper, writing, or document used in connection with any of the proceedings required for the registration of lands or the notation of entries upon the register of titles; (4) steals or fraudulently conceals any owner's certificate, creditor's certificate, or other certificate of title provided for under this article; (5) fraudulently alters, changes, or mutilates any writing, instrument, document, record, registration, or register provided for under this article; (6) makes any false oath or affidavit with respect to any matter or thing provided for in this article; or (7) makes or knowingly uses any counterfeit of any certificate provided for by this article shall be guilty of a felony and shall be punished by imprisonment for not less than one nor more than ten years.”***
48. The February 8<sup>th</sup>, 2010 ASSIGNMENT OF NOTE AND SECURITY DEED filed by the Defendants features the signature of known robo-signer - Jeffrey Stephan.
49. The Defendants have acted in bad faith by initiating foreclosures on the Plaintiff's home when they knew or should have known that a Jeffrey



Stephan signed assignment was likely fraudulent or invalid due to verification irregularities.

50. Well before the Feb. 8<sup>th</sup> signing, Jeffrey Stephan, had admitted in a Florida deposition that he signed thousands of affidavits a month without personal knowledge, and had made false statements to courts under oath in hundreds of cases.

51. Other depositions in Maine, and court sanctions followed. (See EXHIBIT 7.)

52. Ohio Judge, Margaret Russo, ordered GMAC to appear before her to provide ***“proof of integrity of all documents submitted”*** in the foreclosure case US Bank, National Association as Trustee vs. James W. Renfro. US Bank and its servicer – GMACM (GMAC Mortgage Corporation) when they submitted documents executed by Jeffrey Stephan.

53. On October 27<sup>th</sup>, 2010, in the same case (US Bank National Association as Trustee vs. James W. Renfro, et al.,) US Bank moved to withdraw the property from sale because GMAC Mortgage Corporation (GMACM) discovered that “...verification irregularities may have occurred in connection with the execution of certain affidavits used in the judicial foreclosure process. GMACM requests that the order of sale be withdrawn

until GMACM can confirm the accuracy of the affidavit supporting the judgment in this matter...”

54. On January 19<sup>th</sup>, 2011 the Washington Post reported:

“Ally Financial, one of the nation's largest lenders, said Tuesday that it is withdrawing all of its foreclosures in Maryland that were approved by employee Jeffrey Stephan, the "robo-signer" who admitted he signed off on thousands of files every month with little or no review. The company, formerly known as GMAC, said about 250 active cases signed by Stephan will be dismissed...”

55. The Defendants operated in bad faith by not verifying and instead submitting into the DeKalb County Real Estate Record a document signed by Jeffrey Stephan, when they knew that hundreds of court dismissals and foreclosure withdrawals had occurred in Florida, Maine, Ohio and Maryland prior to his signature on the February 8<sup>th</sup>, 2010 ASSIGNMENT OF NOTE AND SECURITY DEED purporting to properly assign the subject property to Defendant, NYBMT.

56. The Defendant's aforementioned pattern of using Stephan's fraudulently signed documents to establish title ownership where none existed, combined with the defendants' early refusal to validate their standing to the Plaintiff before commencing foreclosure in July of 2009, and their decision to execute and file an after-the-fact assignment which is fraudulent on its face, leads the Plaintiff to these conclusions, and Plaintiff alleges:

- a. The Jeffrey Stephan-signed ASSIGNMENT OF NOTE AND SECURITY DEED is consistent with the thousands of other fraudulent documents he has signed and
- b. Knowing this and in bad faith, the Defendants recorded it in the DeKalb County Real Estate Record to fraudulently vest title in the Defendant – NYBMT, in order to justify the Defendants' illegally collecting payments from the Plaintiff, and wrongfully foreclosing on Plaintiff Madzimoyo's home and property at 852 Brafferton Place, Stone Mountain, GA. 30083.

57. Georgia's highest Court has spoken clearly about forged documents in Mortgage transactions in *Aurora Loan Services, LLC v. John MaCelray Veatch, ADMR., et al.*, Supreme Court of Georgia, S10A1725 (decided March 18, 2011)

***“A forged deed is a nullity and vests no title in a grantee [Cit.]. As such, even a bonafide purchaser for value without notice of a forgery cannot acquire good title from a grantee in a forged deed, or those holding under such a grantee, because the grantee has no title to convey.”***

58. Any foreclosure of the security in the absence of a valid assignment is null and void ab initio. In re *Cummings*, 173 B.R. 959, 962 (N.D. Ga. 1994). Any foreclosure conducted using fraudulently signed and attested documents, which the Defendants knew or should have known to be fraudulently executed, including deeds, transfers, assignments or any other document, that are missing the signature of an unofficial witness and deeds missing the signature of an official witness (emphasis added) are defective. Therefore, any wrongful foreclosures are void under O.C.G.A. § 23-2-114.

59. The Plaintiff alleges that the Defendants’ subsequent filing of January 4<sup>th</sup>, 2011 “CORRECTIVE ASSIGNMENT OF SECURITY DEED” further demonstrates fraud and bad faith. (See EXHIBIT 3.)

60. Although the “authorized officers” signers have changed, Plaintiff alleges that the original signer – Jeffrey Stephan - of the February 8<sup>th</sup>, 2010 assignment - lacked signing authority and signed fraudulently rendering the document a nullity. Such an assignment is fraudulent, and fraud is not correctable.

61. The Defendants assert : ***“This Corrective Assignment of Security Deed is being recorded in order to correct the corporate names of the Assignee and Assignor.”*** This implies that these changes were to address “scrivener’s errors” (spelling errors, typos, insignificant, and or agreed upon date errors, etc.). (See EXHIBIT 3.)

62. According to US Legal.Com:

The doctrine of Scrivener's error is a legal principle which permits a typographical error in a written contract to be corrected by parol evidence if the evidence is clear, convincing, and precise. ***However if such correction affects property rights then it must be approved by those affected by it.*** (Emphasis Added) Scrivener's error is an error due to a minor mistake or inadvertence and not one that occurs from judicial reasoning or determination.

63. The Defendants’ **CORRECTIVE ASSIGNMENT OF SECURITY**

**DEED** goes much farther than correcting the spelling of corporate names to naming different corporate entities. It actually changes the names of the assignors and assignees:

The assignors from:

a. The Bank of New York Mellon Trust Company,

National Association fka The Bank of New York Trust

Company, N.A. *as successor to JPMorgan Chase  
Bank, NA as Trustee s/b/m to Bank One, N.A.* in the  
**Jeffrey Stephan signed assignment of Feb, 8<sup>th</sup> 2010**  
to

- b. Assignors: The Bank of New York Mellon Trust  
Company, National Association fka The Bank of New  
York Trust Company, N.A. as successor to JPMorgan  
Chase Bank, NA as Trustee s/b/m to Bank One, N.A. as  
Trustee s/b/m to *The First National Bank of Chicago*  
*as Trustee in the Corrective Assignment dated*  
**January 18, 2011.**

64. In order to complete the chain of title, we have to know who  
the actual assignor was and from whom they received and for  
what consideration.

65. The Defendants also changed the names of the assignee from:

- a. The Bank of New York Mellon Trust Company,  
National Association fka The Bank of New York Trust  
Company, N.A. as *successor to JPMorgan Chase*  
*Bank, NA as Trustee for RAMP 2006-RP2* in the

**Jeffrey Stephan signed assignment of Feb, 8<sup>th</sup> 2010**

to

- b. The Bank of New York Mellon Trust Company,  
National Association fka The Bank of New York Trust  
Company, N.A. as *successor to JPMorgan Chase  
Bank, NA as Trustee s/b/m to Bank One, NA as  
Trustee s/b/m to The First National Bank of Chicago  
as Trustee for RAMP 2006-RP2 in the Corrective  
Assignment dated January 18, 2011.*

- c. The doctrine of scrivener's error pursuant to OCGA 9-10-132 would  
require that proper motions be made before the Court to effectuate  
such a change in the names of assignees and assignors. Such a change  
devoid of proper motions is fraudulent and renders the assignments a  
nullity.

**66.** Note also, that neither of the first two NOTICES OF FORECLOSURE  
mailed to the Plaintiff listed either "... **The First National Bank of  
Chicago as Trustee** nor ...**The First National Bank of Chicago as Trustee  
for RAMP 2006RP2.**" (See *EXHIBIT 8.*)

67. The July 25<sup>th</sup>, 2011 NOTICE OF FORECLOSURE on Subject Property from McCurdy and Candler, LLC, list yet another Corporate entity as the creditor: **The Bank of New York Mellon Trust Company, National Association fka The Bank of New York Trust Company, N.A. as successor to JPMorgan Chase Bank, NA as Trustee for RAAC 2006 RP2 (See Exhibit 9.)**

68. The Securities and Exchange Commission has verified that MBS-  
**RAAC2006-RP2** and ... **RAMP2006-RP2** are distinct trusts with distinct Pooling and Service Agreements, investors, etc.

Multiple “secured creditors” is in direct violation of the already sited OCGA 44-14-162.2 (a-c) regarding mailing notices under *Powers of Sale* and strict adherence to the law.

Exhibit 5 shows the assignment from FT Mortgage to First National Bank of Chicago on March 26, 1999, three days after the Plaintiff had closed on his mortgage. However, the bogus assignments filed by the Defendants attest that the foreclosing party NYBMT “came to hold” legal interest and authority to foreclose because of a series of mergers and successions of **The First National Bank of Chicago as Trustee for RAMP 2006RP2**. In 1999, the trust- RAMP2006-RP2 did not exist and didn’t come



into being until 2006, and therefore could not have been the basis from which the authority of chain of title flows.

69. Defendants Anthony DeMarlo and McCurdy and Candler also acted in bad faith by abrogating their professional responsibility for verification, and instead repeatedly relying on LPS and/or Doc X and/or Prommis Solutions and/or LPS and/or Lender Processing Services and/or Equifax DNA and/or Fidelity National Information Services and/or Fidelity National Foreclosure Solutions for assignment, foreclosure, and/or title information about subject property.

70. If it were merely a lapse in judgment, surely the Plaintiff's challenge and Judge Tangela Barrie's 2009 order for the Defendants "*to bring proper evidence of chain of title*" would have reminded them of their ethical and professional responsibility to verify for themselves the veracity of the subsequent documents vesting rights in their client to foreclose. Given the continued inconsistencies, the Defendants continued in bad faith to rely on LPS or document companies like LPS for information regarding the Plaintiff's mortgage loan status and the right of its client relative to it.

71. Lender Processing Services. (LPS) and the other aforementioned outsourcers who provide third party mortgage services base their business model in part on the *industrialization of documentation production and*

*execution*. This has led to foreclosure abuses that Defendants knew or should have known about.

72. To wit:

- a. Nevada Attorney General Catherine Cortez Masto sued LPS over its practices, including “fraudulent notarizations.” She also indicted two individuals involved in LPS’s document execution factory.
- b. Missouri Attorney General (AG) indicted LPS subsidiary DocX for 136 counts of forgery and making a false declaration related to mortgage documents. The AG noted these forged documents were notarized by DocX as well.
- c. In Oct. 2010 The standing Chapter 13 Trustee for the Northern District of Mississippi, Locke Barkley, joined litigation against LPS on behalf of herself and of all Chapter 13 Trustees in the US. This suit, in part, is aimed at the alleged clandestine “fee splitting” between lawyers and LPS that litigants say are disguised as various fees for services.

73. Defendant McCurdy and Candler has been the LPS (Lender Processing Services) Summit Award winner on at least two occasions.

“Lender Processing Services, Inc. (LPS) has recognized the firm's (McCurdy and Candler's) work with its Summit Award for Excellence in Foreclosure and Bankruptcy for every quarter in both 2007 and 2008, the only firm in the LPS network with more than 100 organizations to achieve this level of consistent excellence.”

74. With such a close association it would be almost impossible for McCurdy and Candler to not be aware of the difficulties with LPS. To continue to rely on them for documents relative to the Plaintiff's property is a clear act of bad faith.

75. **O.C.G.A. 23-2-114** states in part that “Powers of Sale in deeds of trust, mortgages, and other instruments *shall be strictly construed and shall be fairly exercised.*” [emphasis added]

76. The Defendants have violated **O.C.G.A. 23-2-114** by repeatedly publishing on July 3<sup>rd</sup>, 2009, and subsequently on February 14, 2011, and July 25, 2011 that Plaintiff Madzimoyo was in default, that his home subject to public auction, and that the Defendants were or represented the verified secured creditor, when neither was/is true.

77. Because of NYBMT's, GMAC's, JPMORGAN CHASE's, and MCCURDY AND CANDLER'S outrageous and extreme conduct, Plaintiff has suffered a

loss of business income and he, his wife and children have suffered  
tremendous emotional distress.

**78.WHEREFORE**, Plaintiff respectfully requests that this Court enter a  
judgment against the DEFENDANTS as follows:

- a. That the Defendants' ability to foreclose on subject property be  
forever prohibited;
- b. That Plaintiff be granted compensatory damages against the  
Defendants NYBMT, JPMORGAN CHASE, GMAC, Anthony  
DeMarlo and McCurdy and Candler in the amount of **\$25,000** each  
for emotional distress; and
- c. That Plaintiff be granted compensatory damages against the  
Defendants in the amount of \$500,000.00;
- d. That Plaintiff is granted such other and further relief as the Court  
deems just and proper;
- e. That Plaintiff have a Jury trial.

**COUNT III- FRAUD BY NYBMT, JPMORGAN CHASE, N.A. and GMAC**

79. Plaintiff re-alleges paragraphs 1 through 78 and incorporates them as though fully set out and incorporated by reference herein.

80. Under Georgia law, the elements of fraud are: 1. false representation by Defendant; 2) scienter; 3) intent to induce Plaintiff to act or refrain from acting; 4) justifiable reliance by Plaintiff; and 5) damages.

81. On July 3, 2009 "NYBMT" by its Agent and Attorney Anthony DeMarlo and McCurdy and Candler, LLC misrepresented itself as the secured creditor in the Foreclosure Notice on subject property when it had no rights within the Plaintiff's mortgage.

82. On February 14, 2011, Defendant NYBMT by its Agent and Attorney Anthony DeMarlo and McCurdy and Candler, LLC misrepresented itself as the secured creditor by executing and recording in the DeKalb County real estate records an assignment fraudulently attested to by Jeffrey Stephan who has testified before and since to have signed assignments with no regard for the truth or legitimacy.

83. On February 14, 2011, Defendant NYBMT by its Agent and Attorney Anthony DeMarlo and McCurdy and Candler, LLC misrepresented itself as the secured creditor by executing and recording in the DeKalb County real

estate records a “corrected assignment” which introduced new corporations in an already fraudulently altered chain of title.

84. Defendants NYBMT, JPMorgan Chase, GMAC/ALLY knew or should have known that it had no rights within the Plaintiff’s mortgage because it knew that it had not been assigned any rights to the property, and had not recorded any alleged transfer into the DeKalb County Court house. The subsequently recorded assignment was not to be executed until February 8th, 2010- seven months after the Defendants had commenced foreclosure.

85. Defendant NYBMT knew or should have known that it had no rights in the Plaintiff’s mortgage and misrepresented to the Plaintiff- Madzimoyo by the letters of July 3<sup>rd</sup>, 2009, Feb. 24, 2011, and July 25th , 2011 that “they had rights *Pursuant to the Power of Sale contained in the Security Deed* given by Plaintiff -Wekesa Madzimoyo to FT Mortgage dba Equibanc Mortgage Corporation on March 23<sup>rd</sup>, 1999 as recorded in the office of the clerk of the superior court of DeKalb County, GA.

86. There being no assignment- recorded or executed to Defendant NYBMT as secured creditor, the letter of July 3<sup>rd</sup>, 2009 was false, untrue, and malicious misrepresentation both by NYBMT and its agent and attorney. The recorded assignments having been fraudulently created and altered to make the

Defendant appear as the secured creditor were false, untrue, and malicious misrepresentation. The Plaintiff is entitled to punitive damages to deter Defendants NYBMT, JPMorgan Chase and GMAC/ALLY from such willful and malicious misrepresentations.

87. Plaintiff relied on the misrepresentation of Defendants NYBMT, JPMORGAN CHASE, GMAC/ALL and their Agent – Anthony DeMarlo-MCCURDY AND CANDLER that Defendant NYBMT had rights under an assignment that was executed as is required by OCGA 44-14-162.2 prior to commencing foreclosure on subject property. The allegations of assignment, successor by merger, etc. are false and untrue. There was not and has never been an assignment executed or recorded previously which gave the Defendants rights to collect mortgage payments or evoke the Power of Sale clause of the subject property security deed for foreclose on the subject property.

88. As a result of NYBMT, JPMORGAN CHASE, GMAC, and its agent and attorney's misrepresentations, Plaintiff was damaged by the advertisement, anxiety, loss of business, and emotional damage from repeated foreclosure commencements

89. **WHEREFORE**, Plaintiff respectfully requests that this Court enter a judgment against the Defendants NYBMT, JPMORGAN CHASE, NA, AND GMAC/ALLY as follows:

- a. That Plaintiff be granted compensatory damages against NYBMT, JPMORGAN CHASE, GMAC/ALLY in the amount of \$250,000.00; and Punitive Damages in the amount of \$1,000,000.00 or such as may be granted in the enlightened conscience of a jury.
- b. That Plaintiff be granted such other and further relief as the Court deems just and proper.

**COUNT IV-FRAUD BY ANTHONY DEMARLO AND MCCURDY AND  
CANDLER, LLC**

90. Plaintiff re-alleges paragraph I through 91 and incorporate them as though fully set out and incorporated by reference herein.

91. Under Georgia law, the elements of fraud are: 1) false representation by Defendant; 2) scienter; 3) intent to induce Plaintiff to act or refrain from acting; 4) justifiable reliance by Plaintiff; and 5) damages



92. On July 3rd, 2009; February 14, 2011; then again on July 25<sup>th</sup>, 2011, attorney Anthony DeMarlo and McCurdy and Candler, LLC sent Plaintiff notices of Pending Foreclosures stating that it was foreclosing on the Note and Security Deed.
93. Anthony DeMarlo and McCurdy and Candler at all times relevant to the Foreclosure Notices sent to the Plaintiff, knew or should have known that NYBMT had no rights, power or authority in the Plaintiff's mortgage.
94. On or before July 3<sup>rd</sup>, 2009 Defendant Anthony DeMarlo and McCurdy and Candler knew or should have known that there was no assignment or record by Defendant NYMBT, JPMorgan Chase, GMAC/ALLY granting them rights in the Plaintiff's mortgage.
95. On or before the subsequent notices (Feb, 14 and July 25<sup>th</sup>, 2011) Defendant Anthony DeMarlo and McCurdy and Candler knew or should have known that the recorded assignments were invalid. Each of the assignments was stamped "return to Anthony DeMarlo, Foreclosure Dept. at McCurdy and Candler" prior to the subsequent 2011 Notices of Foreclosure. (See EXHIBITS 2 and 3.) Further, the Defendant Anthony DeMarlo and McCurdy and Candler had been alerted by the Plaintiff's allegations in this initial Petition for an Emergency Restraining Order to Stop Foreclosure, and

by DeKalb County Judge Tangela Barrie's order for them to "bring proper evidence of chain of title." The Defendant Anthony DeMarlo and McCurdy and Candler intentionally and deliberately moved to deceive the Plaintiff to believe that Defendant NYBMT was the secured creditor for the subject property. (See EXHIBITS 2 and 3.)

96. Plaintiff was deceived by the misrepresentation by GMAC, JPMORGAN CHASE, NYBMT's agent and attorney that NYBMT has rights under an assignment, then a "corrected assignment" recorded in the Clerk's Office of the Superior Court of DeKalb County. Said misrepresentations were false and untrue by Anthony DeMarlo and McCurdy and Candler since there were no assignments to the foreclosing creditor executed or recorded prior to the first Notice of Foreclosure, and since both subsequent assignments were after the fact, and invalid.

97. Plaintiff relied on the false and misleading representations by Anthony DeMarlo and McCurdy and Candler's NOTICES OF PENDING FORECLOSURE that NYBMT had rights to foreclose on Plaintiff's property due to assignments recorded in the Superior Court of Clerk of DeKalb County.

98. As a result of Anthony DeMarlo and McCurdy and Candler's misrepresentations, Plaintiff was damaged by its property being advertised and a nearly 4 years of wrongful foreclosure battles
99. There being no assignment of record by Defendant NYBMT until seven months after Anthony DeMarlo and McCurdy and Candler's initial NOTICE OF PENDING FORECLOSURE, and their ignoring Judge Tangela Barrie's order to make sure the chain of title was complete , and their sending repeated foreclosure notices based on invalid assignments, such willful and malicious misrepresentation, Plaintiff is entitled to punitive damages to deter Defendants Anthony DeMarlo and McCurdy and Candler, LLC. from such willful and malicious conduct again.
100. **WHEREFORE**, Plaintiff respectfully requests that this Court enter judgment against the Defendants Anthony DeMarlo and McCurdy and Candler as follows:
- a. That Plaintiff be granted compensatory damages against Anthony DeMarlo and McCurdy and Candler, LLC in the amount of \$250,000.00; and punitive damages in the amount of one Million (\$1,000,000) to deter Defendants Anthony DeMarlo and McCurdy

and Candler from such willful and malicious misrepresentation and conduct;

b. That Plaintiff be granted such other and further relief as the Court deems just and proper;

c. That the Plaintiff be granted a Jury Trial.

**COUNT V- QUIET TITLE/SLANDER TITLE**

101. Plaintiff re-alleges paragraph I through 100 and incorporate them as though fully set out and incorporated by reference herein.

102. The Defendants' missing documentation for early assignments from the loan originator, to the sponsor, to the depositor, to the trust will probably make it impossible to reconstruct the accurate chain of title.

103. The Defendants' fraudulent assignments, and conflicting submissions into the land record and on the Notices of Foreclosures have created both patently and latently defective deeds, which slanders the title of any property foreclosed upon that relied upon an assignment with the fraudulent attestation causing the Plaintiff damages.

104. While purporting to have standing, the Defendants have:
- a. initiated multiple wrongful foreclosure proceedings,
  - b. entered invalid documents into the chain of title to facilitate foreclosure,
  - c. refused to execute sales as required by the governing Pooling and Services Agreement and/or failed to record subject property mortgage sales, transfers, assignments of land title documents as required by Georgia law.
105. The Defendants splitting the note from the security deed, and the dubious process of signing in blank (the promissory note) violates GA chain of title laws and raises the question of who has the authority to foreclose.
106. All of this and more has actually slandered the property's title.
107. There is a genuine issue of material fact as to whether the Plaintiff's note was ever equitably and lawfully assigned to any trust, let alone the Defendants', and the invisible intervening owners and holders in the alleged securitization chains. (**RAAC 2006 RP2 or RAMP 2006 RP2**)

108. Given the contradictions between the after-the-fact assignment, and the corrective assignment and the different secured creditors on the Notices of Foreclosure, parties that have justifiably relied on county land records when buying, extending, financing or insuring title to real property will be unable to do so.

### **CONCLUSION**

109. The Plaintiff and his wife are self-employed. These untrue and derogatory financial statements and advertisements concerning the Plaintiff's personal financial condition have tremendously hurt their businesses.

110. This, combined with the 2000-plus hours and expense of litigation to defend his home and reputation against multiple commencements of wrongful foreclosure at the hands of the Defendants have been severe and substantial.

111. In addition to seeking compensatory, consequential, punitive and other damages (see previous counts), Plaintiff seeks declaratory relief as to what (if any) party, entity or individual or group thereof is the owner of the

promissory note executed at the time of the loan closing by Plaintiff  
Madzimoyo, and whether the purported Deed to Secure Debt ("Deed")  
secures any obligation of the Plaintiff to any Defendant, and if not, a Final  
Judgment granting Plaintiff Quiet Title in the subject property and an  
unsecured note payable to its true owners.

**Wherefore, Plaintiff requests**

1. That the commenced foreclosure be set aside
2. That the Court grant **Declaratory Judgment** which states Defendants had and  
have no legal standing or the proper legal or equitable interest in either the Note  
AND Security Deed to institute or maintain a foreclosure;
3. That the Court determine and rule on the *lawful chain of title* to the Plaintiff's  
note so as to determine each lawful transfer and who the current holder in due  
course of the Plaintiff's note is, if any;
4. That the Court , finding none of the Defendants to be holders in due course,  
issue a Final Judgment granting Defendant Quiet Title in the subject property,  
and an unsecured note payable to its true owners.

5. That the Defendants be required to pay **compensatory damages** to the Plaintiff for the **wrongful foreclosure, bad faith, fraud, and slander of property title** for more than three years **as explicated in each count of this lawsuit;**
6. That the Defendants be required to pay **damages including punitive damages** to the Plaintiff for Wrongful Foreclosure, Bad faith, Slander of Property Title, Fraud against the Plaintiff as previously **set forth in each count of this lawsuit;**
7. That the Court void and further declare the Plaintiff's property free and clear from all claims and encumbrances; and
8. That the Court includes relief for the Plaintiff that takes into account the **financial burden** caused by this Defendants' actions, litigation, loss of reputation, loss of business, as well as the infliction of **emotional distress** and that the court includes relief as it may deem necessary and just.

Submitted this 1<sup>st</sup> day of May, 2012

Wekesa O. Madzimoyo

Wekesa O. Madzimoyo

Pro Se Litigant

404-201-2356



## CERTIFICATION OF SERVICE

I hereby certify that a true and correct copy of the within was served upon all parties to this matter by my depositing a true copy of same in the U.S. Mail, proper postage prepaid, addressed to counsel of record as follows:

Counsel for Defendants:  
McCurdy & Candler, LLC  
Anthony Demarlo, Attorney

Frank R. Olson, Esq.  
McCurdy & Candler, LLC  
3525 Piedmont Rd, NE  
Bldg 6, Suite 700  
Atlanta, GA 30305  
404-373-1612

Counsel for Defendants:  
GMAC Mortgage LLC  
JP Morgan Chase Bank  
The Bank of New York Mellon Trust Company

William Loeffler, Georgia Bar No 755699  
Teah N. Glenn, Georgia Bar No 430412  
Troutman Sanders LLP  
5200 Bank of America Plaza  
600 Peachtree Street, N.E.,  
Atlanta, GA 30308-2216  
404-885-3000

Wekesa O. Madzimoyo Date 5/1/2012  
Wekesa O. Madzimoyo, Pro Se  
852 Brafferton Place, Stone Mountain, GA 30083  
404-201-2356  
Wekesa@gmail.com

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# EXHIBIT 1

LAW OFFICES  
**McCURDY & CANDLER, L.L.C.**

SUITE 600  
250 EAST PONCE DE LEON AVENUE  
DECATUR, GEORGIA 30030

JULIUS A. McCLEARY (1901 - 1993)  
SCOTT CANDLER, JR. (1926 - 1994)  
7 ROBIN HARRIS (1913 - 1989)

JOHN WALTER DRAKE  
ALAN E. RAUBER  
JOHN C. SANIMON  
ANTHONY DEMARLO  
SCOTT CANDLER, III  
CLARK E. CANDLER  
EDNA E. HAWES  
SIDNEY A. GELBERMAN  
DONALD C. SUESSMITH, JR.  
J. MICHAEL DUGAN  
CHRISTIE B. HENNING  
DEBORAH Y. CHANDLER  
REBECCA A. HOELTING  
MARGARET C. COURTHRIGHT

FRANK R. OLSON  
A. BRETT VERNER  
LAURA A. GRIFKA  
C. ELIZABETH JONES  
PATRICK N. TAGGART  
JOHN D. ANDRLE  
C. ERIC BURKETT  
JESSICA A. PRICE  
BRENT Z. SKOLNICK  
CHRISTINA J. SOLDHUB  
TENNILLE R. BAILEY  
ROBERT J. WILKINSON  
OF COUNSEL  
FRANK J. RHODES, JR.  
H. RAUFORD HODGES, JR. (RETIRED)

\*ALSO ADMITTED IN TENNESSEE

MAILING ADDRESS:

Post Office Box 57  
Decatur, Georgia 30031

TELEPHONE: 404-373-1612  
MAIN TELECOPIER: 404-370-7232

WEBSITE: [WWW.MCCURDYCANDLER.COM](http://WWW.MCCURDYCANDLER.COM)

July 3, 2009

Certified Mail  
Return Requested 7008 1830 0001 0661 3884  
and Regular Mail

Wekesa O. Madzimoyo  
852 Brafferton Place  
Stone Mountain, GA 30083

RE: NOTICE OF FORECLOSURE SALE ENCLOSED

Our File No.: 09-15522  
Loan No.: [REDACTED] 7285  
Borrower Name: Wekesa O. Madzimoyo  
Property Address: 852 Brafferton Place  
Stone Mountain, GA 30083

**\*\*\*Pursuant to O.C.G.A. Section 44-14-162.2, the following is the entity who has full authority to discuss, negotiate, or change all terms of the mortgage with you concerning the foreclosure alternatives described later in this letter.\*\*\***

**Servicer: GMAC Mortgage, LLC**  
**Address: Two Ravinia Dr., Suite 500**  
**Atlanta, GA 30346**  
**Phone Number: Joyce Gregory-6788557067**

**Creditor: The Bank of New York Mellon Trust Company, National Association fka The Bank of New York Trust Company, N.A. as successor to JPMorgan Chase Bank N.A. as Trustee for RAMP 2006RP2**

Dear Sir or Madam:

By letter dated July 3, 2009, (the "Initial Communication Letter"), I notified you that the above-referenced creditor has referred the referenced loan to this law firm for handling. That letter also advised you of certain rights (the "Borrowers' Rights" which include your right to validate the debt) you could exercise within 30 days of your receipt of the Initial Communication Letter. Nothing in this letter will prevent you from exercising the Borrowers' Rights as explained in the Initial Communication Letter.

36

A failure to comply with the terms of the above loan with The Bank of New York Mellon Trust Company, National Association fka The Bank of New York Trust Company, N.A. as successor to JPMorgan Chase Bank N.A. as Trustee for RAMP 2006RP2 has created a default. As a result, the entire amount of the outstanding balance of the loan has been, and is hereby, declared immediately due and payable. This letter is a formal demand for immediate payment of the total indebtedness. Any partial payment received by The Bank of New York Mellon Trust Company, National Association fka The Bank of New York Trust Company, N.A. as successor to JPMorgan Chase Bank N.A. as Trustee for RAMP 2006RP2 on the subject debt after the date of this letter will be applied to the reduction of the aforesaid debt and will not result in a reinstatement or a deceleration of the loan.

Advertisement of foreclosure will be inserted, as provided by law, providing for public sale to be held on August 4, 2009, before the courthouse door of DeKalb County, Georgia.

Please be advised that the provisions in the loan documents relative to payment of attorney's fees, in addition to principal and interest, will be enforced. Unless the entire balance is paid within ten (10) days from the date you receive this notice, such attorney's fees as allowed by Official Code of Georgia, §13-1-11, as amended, will be owed.

If you are currently in the military service AND joined after signing the mortgage (Security Deed) now in foreclosure, please so notify this office immediately. You may be entitled to relief under the Soldiers and Sailors Relief Act. When contacting this office as to your military service you must provide us with positive proof as to your military status. The name, address and telephone number of your Base Commander is essential. If you do not provide this information we will assume that you are not entitled to protection under the above mentioned act.

If you have received a discharge in Bankruptcy proceeding, this notice is not intended to indicate that you are personally liable for this debt. In this instance the information concerning the associated debt owed is for informational purposes only and should be disregarded for any purposes other than that of conducting a non judicial foreclosure of the security pursuant to Georgia law.

The Servicer may allow you to reinstate the loan and stop the foreclosure. You may call to find out if reinstatement is allowed; and if allowed, to find out the amount of money you must pay in order to cure the default. If you are allowed to reinstate your loan, payment must be made through our office in the form of certified funds or cashier's check. Other alternatives the Servicer may consider are full payoffs, short payoffs, deeds in lieu of foreclosure, repay plan, loan modification or some other mutual agreement. The Servicer is willing to consider your individual circumstances and will be flexible in its consideration of various alternatives. This is not meant to indicate that the Servicer will definitely accept any of the above alternatives as your loan has been accelerated and foreclosure proceedings will continue. I urge you to contact the Servicer at Joyce Gregory-6788557067 immediately regarding your situation. You may also contact our office at our toll free number of 1-866-303-0517 to assist with your communications with the Servicer.

The enclosed "Notice of Sale Under Power" is a copy of the advertisement sent to The Champion Newspaper for publication.

BE GOVERNED ACCORDINGLY.

McCurdy & Candler, L.L.C.

*Anthony DeMarlo*

Anthony DeMarlo

Attorney for The Bank of New York Mellon Trust  
Company, National Association fka The Bank of New York Trust  
Company, N.A. as successor to JPMorgan Chase Bank N.A. as  
Trustee for RAMP 2006RP2

# EXHIBIT 2

2019042691 REED BOOK 21860 Pg 499  
Filed and Recorded:  
2/18/2016 11:38:28 AM  
Linda Carter  
Clerk of Superior Court  
DeKalb County, Georgia

When Recorded, Return to:  
Amy Anthony Dinkins-Pennix  
McCord & Sanders, L.L.C.  
718 East Ponce De Leon Avenue  
Decatur, GA 30030

STATE OF la.  
COUNTY OF Montgomery

File No. D9-15522

**ASSIGNMENT OF NOTE AND SECURITY DEED**

FOR VALUE RECEIVED, Assignee Name: The Bank of New York Mellon Trust Company, National Association fka The Bank of New York Trust Company, N.A. as successor to JPMorgan Chase Bank, N.A. as Trustee s/b/m to Bank One, N.A. (hereinafter referred to as "Assignor") hereby sells, assigns, transfers, sets over and conveys without recourse unto The Bank of New York Mellon Trust Company, National Association fka The Bank of New York Trust Company, N.A. as successor to JPMorgan Chase Bank N.A. as Trustee for RAMP 2006RP2 (hereinafter referred to as "Assignee"), whose address is 1100 Virginia Drive Fort Washington, PA 19034, that certain Security Deed or Deed to Secure Debt executed by Welosa D. Madzimoya to FT Mortgage Companies d.b.a. EquiBanc Mortgage Corporation and dated March 23, 1999, recorded in Deed Book 10618, Page 268, Clerk's Office, Superior Court of DeKalb County, Georgia, together with the real property therein described; and also the indebtedness described in said Deed and secured thereby, the notes evidencing said indebtedness having this day been transferred and assigned to the said Assignee together with all of Assignor's right, title and interest in and to the said Deed, the property therein described and the indebtedness secured; and the said Assignee is hereby subrogated to all the rights, powers, privileges and securities vested in Assignor under and by virtue of the aforesaid Security Deed or Deed to Secure Debt.

DEED BOOK 21860 P. 500  
Linda Carter  
Clerk of Superior Court  
DeKalb County, Georgia

File No. 09-15522

This Assignment of Note and Security Deed is executed on this 8 day of February, 2010.

Signed, sealed and delivered  
in the presence of:

Assignee Name: The Bank of New York Mellon Trust  
Company, National Association fka The Bank of New  
York Trust Company, N.A. as successor to JPMorgan  
Chase Bank, N.A. as Trustee s/b/m to Bank One, N.A.

By:  
its:

Jeffroy Stephan  
Limited Signing Officer

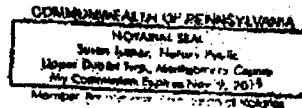
By:  
its:

John Kerr  
Limited Signing Officer

Unofficial Witness

Notary Public

My Commission Expires:



# EXHIBIT 3



2011026886 DEED BOOK 22326 Pg 593  
Filed and Recorded:  
1/24/2011 2:43:00 PM  
Unice Carter  
Clerk of Superior Court  
DeKalb County, Georgia

When Recorded, Return to:  
Attn: Anthony DeMato/Foreclosure Dept/20  
McCurdy & Candler, L.L.C.  
3325 Piedmont Road NE, Ste Piedmont Center, Suite 700  
Atlanta, GA 30305

Clerk, please cross reference to:  
Security Deed in Deed Book 10618, Page 268  
Assignment in Deed Book 21860, Page 499  
DeKalb County, Georgia Records

STATE OF Pennsylvania  
COUNTY OF Montgomery

File No. 09-15522

**\* CORRECTIVE ASSIGNMENT OF SECURITY DEED**

FOR VALUE RECEIVED, The Bank of New York Mellon Trust Company, National Association fka The Bank of New York Trust Company, N.A. as successor to JPMorgan Chase Bank, N.A. as Trustee s/b/m to Bank One, N.A. as Trustee s/b/m to The First National Bank of Chicago as Trustee (hereinafter referred to as "Assignor") hereby sells, assigns, transfers, sets over and conveys without recourse unto The Bank of New York Mellon Trust Company, National Association fka The Bank of New York Trust Company, N.A. as successor to JPMorgan Chase Bank, N.A. as Trustee s/b/m to Bank One, N.A. as Trustee s/b/m to The First National Bank of Chicago as Trustee for RAMP 2006RP2 (hereinafter referred to as "Assignee"), whose address is 1100 Virginia Drive Fort Washington, PA 19034, that certain Security Deed or Deed to Secure Debt executed by Wekesa O. Madzimoyo to FT Mortgage Companies d.b.a. EquiBanc Mortgage Corporation and dated March 23, 1999, recorded in Deed Book 10618, Page 268, Clerk's Office, Superior Court of DeKalb County, Georgia, together with the real property therein described, which has the property address of 852 Brafferton Place; and also the indebtedness described in said Deed and secured thereby, having this day been transferred and assigned to the said Assignee together with all of Assignor's right, title and interest in and to the said Deed, the property therein described and the indebtedness secured; and the said Assignee is hereby subrogated to all the rights, powers, privileges and securities vested in Assignor under and by virtue of the aforesaid Security Deed or Deed to Secure Debt.

\* This Corrective Assignment of Security Deed is being recorded in order to correct the corporate names of the Assignee and Assignor.

This Assignment of Security Deed is executed on this 18<sup>th</sup> day of January, 2011.

Signed, sealed and delivered  
in the presence of:

The Bank of New York Mellon Trust Company, National Association fka The Bank of New York Trust Company, N.A. as successor to JPMorgan Chase Bank, N.A. as Trustee s/b/m to Bank One, N.A. as Trustee s/b/m to The First National Bank of Chicago as Trustee

By: [Signature]  
In: Mira Smoot Authorized Officer

By: [Signature] Susan Turner  
In: [Signature] Authorized Officer

Unofficial Witness [Signature]

Notary Public

My Commission Expires:

COMMONWEALTH OF PENNSYLVANIA  
Notarial Seal  
Tina Widom, Notary Public  
Upper Dublin Twp., Montgomery County  
My Commission Expires Sept. 18, 2013

2011021455 DEED BOOK 22326 Pg 583  
Filed and Recorded:  
1/24/2011 2:43:08 PM  
Linda Carter  
Clerk of Superior Court  
DeKalb County, Georgia

When Recorded, Return to:  
Attn: Anthony DeMarlo/Foreclosure Dept/Sec  
McCurdy & Candler, L.L.C.  
3323 Piedmont Road NE, Six Piedmont Center, Suite 700  
Atlanta, GA 30305

Clerk, please cross reference to  
Security Deed in Deed Book 10618, Page 268  
Assignments in Deed Book 21960, Page 499  
DeKalb County, Georgia Records

STATE OF Pennsylvania  
COUNTY OF Montgomery

File No. 09-15522

**\* CORRECTIVE ASSIGNMENT OF SECURITY DEED**

FOR VALUE RECEIVED, The Bank of New York Mellon Trust Company, National Association fka The Bank of New York Trust Company, N.A. as successor to JPMorgan Chase Bank, N.A. as Trustee s/b/m to Bank One, N.A. as Trustee s/b/m to The First National Bank of Chicago as Trustee (hereinafter referred to as "Assignor") hereby sells, assigns, transfers, sets over and conveys without recourse unto The Bank of New York Mellon Trust Company, National Association fka The Bank of New York Trust Company, N.A. as successor to JPMorgan Chase Bank, N.A. as Trustee s/b/m to Bank One, N.A. as Trustee s/b/m to The First National Bank of Chicago as Trustee for RAMP 2006RP2 (hereinafter referred to as "Assignee"), whose address is 1100 Virginia Drive Fort Washington, PA 19034, that certain Security Deed or Deed to Secure Debt executed by Wekesa O. Madzimoyo to FT Mortgage Companies d.b.a. EquiBanc Mortgage Corporation and dated March 23, 1999, recorded in Deed Book 10618, Page 268, Clerk's Office, Superior Court of DeKalb County, Georgia, together with the real property therein described, which has the property address of 852 Brafferton Place; and also the indebtedness described in said Deed and secured thereby, having this day been transferred and assigned to the said Assignee together with all of Assignor's right, title and interest in and to the said Deed, the property therein described and the indebtedness secured; and the said Assignee is hereby subrogated to all the rights, powers, privileges and securities vested in Assignor under and by virtue of the aforesaid Security Deed or Deed to Secure Debt.

\* This Corrective Assignment of Security Deed is being recorded in order to correct the corporate names of the Assignee and Assignor.

This Assignment of Security Deed is executed on this 18<sup>th</sup> day of January, 2011.

Signed, sealed and delivered  
in the presence of:

The Bank of New York Mellon Trust Company, National Association fka The Bank of New York Trust Company, N.A. as successor to JPMorgan Chase Bank, N.A. as Trustee s/b/m to Bank One, N.A. as Trustee s/b/m to The First National Bank of Chicago as Trustee

By: [Signature]  
In: Mira Smoot Authorized Officer

By: [Signature] Susan Turner  
In: [Signature] Authorized Officer

Unofficial Witness [Signature]

Notary Public

My Commission Expires: \_\_\_\_\_

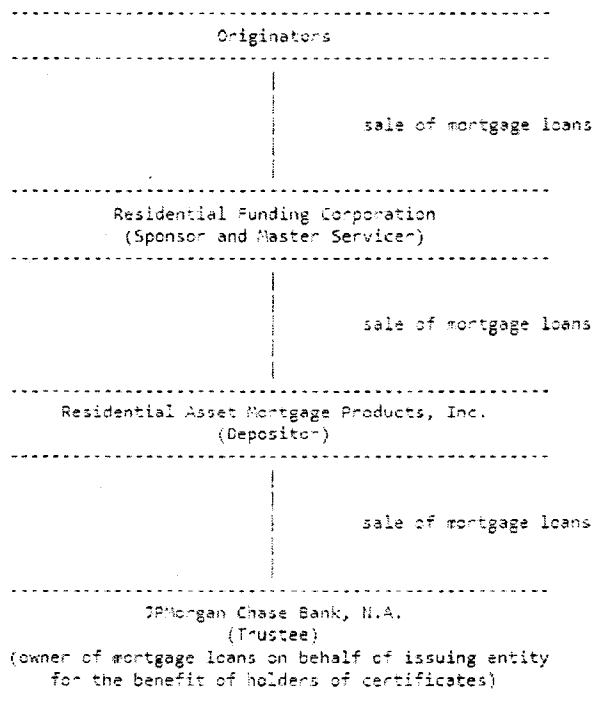
COMMONWEALTH OF PENNSYLVANIA

Notarial Seal  
Tina W. Dink, Notary Public  
Upper Dublin Twp., Montgomery County  
My Commission Expires Sept. 18, 2013

# EXHIBIT 4

TRANSFER OF MORTGAGE LOANS

The diagram below illustrates the sequence of transfers of the mortgage loans that are included in the mortgage pool. The originators will, on or prior to the closing date, sell the mortgage loans to the sponsor. The sponsor will, simultaneously with the closing of the transaction described in this prospectus supplement, sell the mortgage loans to the depositor. The depositor will then transfer the mortgage loans to the trustee, on behalf of the trust that is the issuing entity. The trustee will accordingly own the mortgage loans for the benefit of the holders of the certificates. See "Pooling and Servicing Agreement--Trustee" in this prospectus supplement and "The Agreements--The Trustee" in the accompanying prospectus. For a description of the affiliations among various transaction parties, see "Affiliations Among Transaction Parties" in this prospectus supplement.



S-3

Issuing entity..... RAMP Series 2006-RP2 Trust.

Cut-off date..... February 1, 2006. Closing date..... On or about March 3, 2006. Title of the offered certificates..... Mortgage Asset-Backed Pass-Through Certificates, Series 2006-RP2.

Line 2,578: Securitization Transaction: Any transaction involving a sale or other transfer of mortgage loans directly or indirectly to an issuing in connection with an issuance of publicly offered or privately placed, rated or unrated mortgage-backed securities.

Excerpted from RAMP Series 2006-RP2-Trust Pooling and Service Agreement and Prospectus

# EXHIBIT 5

JUN-29-2009 MON 01:12 PM

FAX NO.

P. 02/07

Deed Book 11849 Pg 76  
Filed and Recorded Feb-02-2009 10:47am  
2001-0013187

*Linda Carter*

Linda Carter  
Clerk of Superior Court DeKalb Cty. Ga.  
1000 Peachtree Street, N.E. Atlanta, GA 30309

ASSIGNMENT

STATE OF GEORGIA  
COUNTY OF FULTON

FT Mortgage Services  
10741 King William  
Dallas, TX 75230  
ATTN: Final Documents  
Loan # 0886

After Recording Return To:  
PEELLE MANAGEMENT CORPORATION  
ASSIGNMENT JOB #90803  
P.O. BOX 1710  
CAMPBELL, CA 95008-1710  
1-408-866-5858

FOR VALUE RECEIVED, FT MORTGAGE COMPANIES DBA EQUIBANC MORTGAGE CORPORATION, (Assignor), a corporation organized and doing business under the laws of the State of Kansas, having its office and principal place of business at 2074 LBJ Freeway, Suite 200, Dallas, TX 74234, hereby sells, assigns, transfers and sets over to THE FIRST NATIONAL BANK OF CHICAGO AS TRUSTEE

One First National Plaza, Suite 0128 Chicago, Illinois 60670-0128

(Assignee), its successors and/or assigns, all its rights, title and interest in and to a certain Deed to Secure Debt dated MARCH 23, 2000 executed by WILMA G. MADZINGA

REC: 4-2-99 INET # 1999-0045166

in the principal sum of \$ 140,000.00 and filed for record in the Office of the Clerk of Superior Court of DeKalb County, Georgia, and recorded in Deed Book 101618 . Page 268 , aforesaid records. The Assignor specifically sells, assigns, transfers and sets over to the Assignee, its successors and assigns, the aforesaid Deed to Secure Debt, the property described therein, the indebtedness secured thereby, with all powers, options, privileges and immunities therein contained. The Assignor has this day sold and endorsed to the Assignee, **WITHOUT RECOURSE**, the Note secured by the aforesaid Deed to Secure Debt, and this Assignment is made to secure the Assignee, its successors and assigns, in the payment of the Said Note. **IN WITNESS WHEREOF**, the Assignor has hereto set its hand and affixed its seal by and through its seal and its duly authorized officers, this 26th day of March , 2000 .

FT Mortgage Companies dba  
Equibanc Mortgage Corporation

BY: Susan L. Grabryan

Susan L. Grabryan  
Asst. Vice President

Signed, Sealed and Delivered  
in the presence of:

WITNESS

Cheryl McIntyre  
NOTARY PUBLIC

Form EQSIGNOA (04/97)



03/24/99  
16:27:08



# EXHIBIT 6

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

WEKESA O. MADZIMOYO,	)	
	)	
Plaintiff,	)	
	)	CIVIL ACTION FILE
v.	)	
	)	NO. 1:09-cv-2355-CAP-GGB
GMAC MORTGAGE, LLC, <i>et al.</i> ,	)	
	)	
Defendants.	)	

**AFFIDAVIT OF JUAN ANTONIO AGUIRRE**

Personally appear before the undersigned officer duly authorized to administer oaths, Juan Antonio Aguirre, who upon being sworn, avers and deposes as follows:

1. My name is Juan Antonio Aguirre. I am over the age of eighteen (18) years and am competent to make this Affidavit. The statements set forth in this affidavit are based directly upon my personal knowledge and upon my review of documents, records, databases, and data compilations made and kept in the regular and normal course of business activities of GMAC Mortgage, LLC ("GMAC"). It is and has been the regular practice of GMAC to make such documents, records, databases, and data compilations at the time of the act(s), event(s), or transaction(s) recorded therein, or within a reasonable time thereafter. I am familiar with the practices of GMAC regarding the making and maintaining of such documents,



records, databases, and data compilations. I am a records custodian of, and I have personally reviewed and examined and have personal knowledge of, the business records implicated by this lawsuit. In addition, I have reviewed the Complaint filed in the above-styled lawsuit.<sup>1</sup>

2. I am the Manager-Litigation Support with GMAC. In my position, I am responsible for reviewing business records and files and researching factual issues pertaining to contested matters involving GMAC's interests.

3. On March 23, 1999, Plaintiff obtained a mortgage loan from FT Mortgage Companies d/b/a Equibanc Mortgage Corporation in the principal amount of \$140,600, which was secured by real property located at 852 Brafferton Place, Stone Mountain, DeKalb County, Georgia, 30083. True and correct copies of the note and security deed are attached hereto as Exhibits A and B, respectively.

4. Subsequently, servicing on the loan was transferred to Homecomings Financial Network, and later to GMAC. Plaintiff was notified as to the servicing transfers.

- By letter dated April 22, 2009, in response to an inquiry made by Plaintiff, he was informed that his loan was then held by JPMorgan and that Homecomings Financial continued to be the servicer on the loan, as it had

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<sup>1</sup> GMAC was misnamed as "GMAC, Mortgage" in Plaintiff's complaint.

been since November 1999. A true and correct copy of this letter is attached hereto as Exhibit C.

- By letter dated June 10, 2009, Plaintiff was informed that the servicing on his loan was being transferred from Homecomings Financial to GMAC effective July 1, 2009. He was provided contact information at GMAC, and informed that the address for sending payments would remain the same. A true and correct copy of this letter is attached hereto as Exhibit D.

5. Plaintiff's security deed was assigned by FT Mortgage Companies to The First National Bank of Chicago ("First Chicago") by assignment dated March 26, 1999. A true and correct copy of that assignment is attached hereto as Exhibit E. Through a series of corporate acquisitions and name changes, the security deed came to be held in the name of The Bank of New York Mellon Trust Company, National Association fka The Bank of New York Trust Company, N.A. as successor to JPMorgan Chase Bank N.A. as Trustee for RAMP 2006RP2, which was the creditor at the time the foreclosure was commenced.

6. Plaintiff defaulted on the loan, which he has failed to cure.

7. As a result of the default on the loan, the law firm of McCurdy and Candler, LLC ("M&C") was retained to conduct a nonjudicial foreclosure sale.


8. At the time the foreclosure was initiated, Plaintiff was substantially delinquent on his loan. In fact, Plaintiff has not made a payment since January 2009.

9. The foreclosure sale was postponed as a result of the filing of this lawsuit.

10. GMAC was the servicer on the loan at the time of the foreclosure.

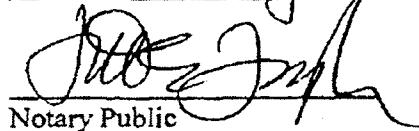
11. Plaintiff has made no tender to GMAC of any money in any amount to satisfy all or any portion of his outstanding indebtedness on the loan.

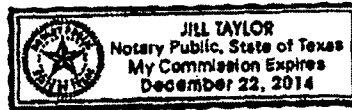
FURTHER AFFIANT SAYETH NOT.

  
Juan Antonio Aguirre

Sworn to and subscribed before me this

18 day of January 2014

  
Notary Public



# EXHIBIT 7

<p align="center"><b>Florida</b> <b>December 10, 2009</b></p>	<p align="center"><b>Maine</b> <b>June 7, 2010</b></p>
<p>Q: So these documents wouldn't be actually executed on your own personal knowledge? A: Right. (p. 10, ls. 13-15)</p>	<p>Q: When you receive a summary judgment affidavit to sign, do you read every paragraph of it? A: No. (p. 61, ls. 24-25 &amp; p. 62, ls. 1-3)</p>
<p>Q: And how do they [his team at GMAC] verify that information is accurate? A: They do not go into the system and verify the information as accurate. (p. 12, ls. 21-24)</p>	<p>Q: Do you have any knowledge about how GMAC ensures the accuracy of the data entered into the system? A: No, I do not. (p. 30, ls. 10-13)</p>
<p>Q: Is the notary present with you...? A: No, they are not physically present.... (p. 13, ls. 10-16)</p>	<p>Q: So you do not appear before the notary; is that correct? A: No, I do not. (p. 56, ls. 16-18)</p>
<p>Q: But is it fair to say that you don't ascertain whether the member is the current promissory note-holder when you assign the lien? A: That would be correct. (p. 31, ls. 12-15)</p>	<p>Q: So other than the due date and the balances due, is it correct that you do not know whether any other part of the affidavit that you sign is true? ... A: That is correct. (p. 67, ls. 21-24 &amp; p. 68, l. 3)</p>
<p>Q: Do you normally review notes to make sure that they are a true copy of the lost note? ... A: No, I do not. It is not my position. (p. 36, ls. 17-19)</p>	<p>Q: When you sign a summary judgment affidavit, do you inspect any exhibits attached to it? A: No. (p. 54, ls. 22-25)</p>
	<p>Q: Is it your understanding that the process that you follow in signing summary judgment affidavits is in accordance with the policies and procedures required of you by GMAC Mortgage? A: Yes. Q: Does GMAC do any quality assurance training for your department? A: Presently, no. (p. 64, ls. 8-17)</p>
	<p><b>Fiserv system</b> Q: Do you have any responsibilities for making entries in the Fiserv system? A: Other than usual notes, no.... Q: What is your usual business practice and routine with respect to making usual notes</p>

	<p>in the Fiserv system?</p> <p>A. If a customer were to call in, I would make a note in our computer system.</p> <p>A. Do customers call you in your capacity as team lead fro the document execution team?</p> <p>A. No, they do not.</p> <p>Q. So if that's the only kind of notes that you would make in the system, is it fair to say that you don't make notes in the system?</p> <p>A. That would be correct.</p> <p>(pp. 26-28 of Maine deposition, Exhibit B)</p> <p>Q. I think you said that the cash department receives payments -- customer payments; is that correct?</p> <p>A. That is correct.</p> <p>Q. So you don't have firsthand knowledge about how it operates; is that correct?</p> <p>A. That is correct.</p> <p>Q. Do you have any knowledge about how the data relating to those payments are entered into the system?</p> <p>A. I do not have that knowledge.</p> <p>Q. Do you have any knowledge about how GMAC ensures the accuracy of the data entered into the system.</p> <p>A. No I do not.</p> <p>Q. Do you have nay knowledge as to what measures GMAC takes to preserve the integrity and security of the system?</p> <p>A. No, I do not.</p> <p>(p. 29-30 of Maine deposition, Exhibit B)</p>
--	--

**B. GMAC Has Been Sanctioned Twice for Filing False Affidavits**

The initial discovery of the problems with GMAC's foreclosure affidavits began, at the latest, in 2006. In May 2006, the Circuit Court in Duvall County, Florida sanctioned a plaintiff in a Florida foreclosure proceeding for filing a false affidavit, and ordered its servicer, GMAC, to provide written confirmation that "affidavits filed in future foreclosure actions in Florida accurately memorialize the actions and conduct of the affiants." (Exhibit C)

# EXHIBIT 8

A failure to comply with the terms of the above loan with The Bank of New York Mellon Trust Company, National Association fka The Bank of New York Trust Company, N.A. as successor to JPMorgan Chase Bank N.A. as Trustee for RAMP 2006RP2 has created a default. As a result, the entire amount of the outstanding balance of the loan has been, and is hereby, declared immediately due and payable. This letter is a formal demand for immediate payment of the total indebtedness. Any partial payment received by The Bank of New York Mellon Trust Company, National Association fka The Bank of New York Trust Company, N.A. as successor to JPMorgan Chase Bank N.A. as Trustee for RAMP 2006RP2 on the subject debt after the date of this letter will be applied to the reduction of the aforesaid debt and will not result in a reinstatement or a deceleration of the loan.

Advertisement of foreclosure will be inserted, as provided by law, providing for public sale to be held on August 4, 2009, before the courthouse door of DeKalb County, Georgia.

Please be advised that the provisions in the loan documents relative to payment of attorney's fees, in addition to principal and interest, will be enforced. Unless the entire balance is paid within ten (10) days from the date you receive this notice, such attorney's fees as allowed by Official Code of Georgia, §13-1-11, as amended, will be owed.

If you are currently in the military service AND joined after signing the mortgage (Security Deed) now in foreclosure, please so notify this office immediately. You may be entitled to relief under the Soldiers and Sailors Relief Act. When contacting this office as to your military service you must provide us with positive proof as to your military status. The name, address and telephone number of your Base Commander is essential. If you do not provide this information we will assume that you are not entitled to protection under the above mentioned act.

If you have received a discharge in Bankruptcy proceeding, this notice is not intended to indicate that you are personally liable for this debt. In this instance the information concerning the associated debt owed is for informational purposes only and should be disregarded for any purposes other than that of conducting a non judicial foreclosure of the security pursuant to Georgia law.

The Servicer may allow you to reinstate the loan and stop the foreclosure. You may call to find out if reinstatement is allowed; and if allowed, to find out the amount of money you must pay in order to cure the default. If you are allowed to reinstate your loan, payment must be made through our office in the form of certified funds or cashier's check. Other alternatives the Servicer may consider are full payoffs, short payoffs, deeds in lieu of foreclosure, repay plan, loan modification or some other mutual agreement. The Servicer is willing to consider your individual circumstances and will be flexible in its consideration of various alternatives. This is not meant to indicate that the Servicer will definitely accept any of the above alternatives as your loan has been accelerated and foreclosure proceedings will continue. I urge you to contact the Servicer at Joyce Gregory-6788557067 immediately regarding your situation. You may also contact our office at our toll free number of 1-866-303-0517 to assist with your communications with the Servicer.

The enclosed "Notice of Sale Under Power" is a copy of the advertisement sent to The Champion Newspaper for publication.

BE GOVERNED ACCORDINGLY.

McCurdy & Candler, L.L.C.

*Anthony DeMarlo*

Anthony DeMarlo  
Attorney for The Bank of New York Mellon Trust  
Company, National Association fka The Bank of New York Trust  
Company, N.A. as successor to JPMorgan Chase Bank N.A. as  
Trustee for RAMP 2006RP2



LAW OFFICES  
**McCurdy & Candler, LLC**

Six Piedmont Center, Suite 700  
3525 Piedmont Road, NE  
Atlanta, GA 30305

JULIUS A. MCCURDY (1903 - 1993)  
SCOTT CANDLER, JR. (1926 - 1994)  
J. ROBIN HARRIS (1925 - 1989)

MAILING ADDRESS:

Post Office Box 57  
Decatur, Georgia 30031

TELEPHONE: 404-373-1612  
MAIN TELECOPIER: 404-370-7232

WEBSITE: [WWW.MCCURDYCANDLER.COM](http://WWW.MCCURDYCANDLER.COM)

JOHN WALTER DRAKE	FRANK R. OLSON*
ALAN E. RAUBER	A. BRETT VERNER
JOHN C. SAMMON	PATRICK N. TAGGART*
ANTHONY DEMARLO	JOHN D. ANDRLE
SCOTT CANDLER, III	C. ERIC BURKETT
CLARKE E. CANDLER	JESSICA A. PRICE
EDNA E. HAWES	CHRISTINA J. SOLOHUB
SIDNEY A. GELERNTER*	TENNIFEL E. B. BAILEY
DONALD C. SUESSMITH, JR.	ROBERT J. WILKINSON*
J. MICHAEL DUGAN*	DANIEL K. BARBAGELATA
DEBORAH Y. CHEEK	ANDREW M. O'CONNELL
CHRISTIE B. HENNING	ANTHONY E. MASELLI
	BIANCA K. DAVIS
	TODD H. SURDEN
	OF COUNSEL
REBECCA A. HOELTING	FRANK J. RHODES, JR.
MARGARET C. COURTRIGHT	H. RAIFORD HODGES, JR. (RETIRED)

\*ALSO ADMITTED IN TENNESSEE

February 14, 2011

Wekesa O. Madzimoyo  
852 Brafferton Place  
Stone Mountain, GA 30083

Re: Our File No.: 09-15522  
Loan No.: [REDACTED] 7285  
Payoff: \$163,289.53  
Borrower Name: Wekesa O. Madzimoyo  
Property Address: 852 Brafferton Place  
Stone Mountain, GA 30083

**Servicer: GMAC Mortgage, LLC**

**Creditor: The Bank of New York Mellon Trust Company, National Association fka The Bank of New York Trust Company, N.A. as successor to JPMorgan Chase Bank N.A. as Trustee for RAMP 2006RP2**

Dear Borrower:

**NOTICE PURSUANT TO FAIR DEBT COLLECTION PRACTICES ACT 15 USC 1692  
INITIAL COMMUNICATION LETTER**

This law firm represents The Bank of New York Mellon Trust Company, National Association fka The Bank of New York Trust Company, N.A. as successor to JPMorgan Chase Bank N.A. as Trustee for RAMP 2006RP2 the creditor on the above referenced loan. This letter is to advise you that we have been retained to collect the debt secured by the above-referenced property, which may involve foreclosure proceedings against said property. As of the date of this letter, you owe \$163,289.53. Because of interest, late charges, and other charges that may vary from day to day, the amount due on the day you pay may be greater. Hence, if you pay the amount shown above, an adjustment may be necessary after we receive your check, in which event we will inform you before depositing the check for collection. For further information, you may call our loss mitigation department at 1-866-303-0517.



Page 2

This letter is an attempt to collect a debt and any information obtained by virtue of it will be used for that purpose. Unless you notify us within thirty (30) days after receipt of this letter that the validity of this debt, or any portion of it, is disputed, we will assume that the debt is valid. If you notify us in writing of a dispute, we will obtain verification of the debt and mail it to you. If the creditor named in this letter is not the original creditor, and you make a written request to this law firm within thirty (30) days after receipt of this notice, then the name and address of the original creditor will be mailed to you by this law firm. We may commence the foreclosure action without waiting thirty (30) days, if so requested by our client.

If you have received a discharge in Bankruptcy proceeding, this notice is not intended to indicate that you are personally liable for this debt. In this instance the information concerning the associated debt owed is for informational purposes only and should be disregarded for any purposes other than that of conducting a non judicial foreclosure of the security pursuant to Georgia law.

The Servicer may allow you to reinstate the loan and stop the foreclosure. You may call to find out if reinstatement is allowed; and if allowed, to find out the amount of money you must pay in order to cure the default. If you are allowed to reinstate your loan, payment must be made through our office in the form of certified funds or cashier's check. Other alternatives the Servicer may consider are full payoffs, short payoffs, deeds in lieu of foreclosure, repay plan, loan modification or some other mutual agreement. The Servicer is willing to consider your individual circumstances and will be flexible in its consideration of various alternatives. This is not meant to indicate that the Servicer will definitely accept any of the above alternatives as your loan has been accelerated and foreclosure proceedings will continue. I urge you to contact the Servicer at 678-855-7067 immediately regarding your situation. You may also contact our office at our toll free number of 1-866-303-0517 to assist with your communications with the Servicer.

BE GOVERNED ACCORDINGLY.

Sincerely,

**Anthony DeMarlo**  
Anthony DeMarlo

AD/awilby

THIS LAW FIRM IS ACTING AS A DEBT COLLECTOR AND IS ATTEMPTING TO COLLECT A  
DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE



# EXHIBIT 9

LAW OFFICES  
**McCurdy & Candler, LLC**

Six Piedmont Center, Suite 700  
3525 Piedmont Road, NE  
Atlanta, GA 30305

TELEPHONE: 404-373-1612  
MAIN TELECOPIER: 404-378-7232

WEBSITE: WWW.MCCURDYCANDLER.COM

July 25, 2011

Certified Mail  
Return Requested  
and Regular Mail

Wekesa O. Madzimoyo  
852 Brafferton Place  
Stone Mountain, GA 30083

RE: NOTICE OF FORECLOSURE SALE ENCLOSED

Our File No.: 09-15522  
Loan No.: [REDACTED] 7285  
Borrower Name: Wekesa O. Madzimoyo  
Property Address: 852 Brafferton Place  
Stone Mountain, GA 30083

**\*\*\*Pursuant to O.C.G.A. Section 44-14-162.2, the following is the entity who has full authority to discuss, negotiate, or change all terms of the mortgage with you concerning the foreclosure alternatives described later in this letter.\*\*\***

**Servicer: GMAC Mortgage, LLC**  
**Address: Two Ravinia Dr., Suite 500**  
**Atlanta, GA 30346**  
**Phone Number: 678-855-7067**

**Creditor: The Bank of New York Mellon Trust Company, National Association fka The Bank of New York Trust Company, N.A. as successor to JPMorgan Chase Bank N.A. as Trustee for RAAC 2006RP2**

Dear Sir or Madam:

By letter dated July 25, 2011, (the "Initial Communication Letter"), I notified you that the above-referenced creditor has referred the referenced loan to this law firm for handling. That letter also advised you of certain rights (the "Borrowers' Rights" which include your right to validate the debt) you could exercise within 30 days of your receipt of the Initial Communication Letter. Nothing in this letter will prevent you from exercising the Borrowers' Rights as explained in the Initial Communication Letter.

A failure to comply with the terms of the above loan with The Bank of New York Mellon Trust Company, National Association fka The Bank of New York Trust Company, N.A. as successor to JPMorgan Chase Bank N.A. as Trustee for RAAC 2006RP2 has created a default. As a result, the entire amount of the outstanding balance of the loan has been, and is hereby, declared immediately due and payable. This letter is a formal demand for immediate payment of the total indebtedness. Any partial payment received by The Bank of New York Mellon Trust Company, National Association fka

Advertisement of foreclosure will be inserted, as provided by law, providing for public sale to be held on September 6, 2011, before the courthouse door of DeKalb County, Georgia.

Please be advised that the provisions in the loan documents relative to payment of attorney's fees, in addition to principal and interest, will be enforced. Unless the entire balance is paid within ten (10) days from the date you receive this notice, such attorney's fees as allowed by Official Code of Georgia, §13-1-11, as amended, will be owed.

If you are currently in the military service AND joined after signing the mortgage (Security Deed) now in foreclosure, please so notify this office immediately. You may be entitled to relief under the Soldiers and Sailors Relief Act. When contacting this office as to your military service you must provide us with positive proof as to your military status. The name, address and telephone number of your Base Commander is essential. If you do not provide this information we will assume that you are not entitled to protection under the above mentioned act.

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The Servicer may allow you to reinstate the loan and stop the foreclosure. You may call to find out if reinstatement is allowed; and if allowed, to find out the amount of money you must pay in order to cure the default. If you are allowed to reinstate your loan, payment must be made through our office in the form of certified funds or cashier's check. Other alternatives the Servicer may consider are full payoffs, short payoffs, deeds in lieu of foreclosure, repay plan, loan modification or some other mutual agreement. The Servicer is willing to consider your individual circumstances and will be flexible in its consideration of various alternatives. This is not meant to indicate that the Servicer will definitely accept any of the above alternatives as your loan has been accelerated and foreclosure proceedings will continue. I urge you to contact the Servicer at 678-855-7067 immediately regarding your situation. You may also contact our office at our toll free number of 1-866-303-0517 to assist with your communications with the Servicer.

The enclosed "Notice of Sale Under Power" is a copy of the advertisement sent to The Champion Newspaper for publication.

**BE GOVERNED ACCORDINGLY.**

**McCurdy & Candler, LLC**

Attorneys for The Bank of New York Mellon

Trust Company, National Association fka The Bank of New York Trust Company, N.A. as successor to JPMorgan Chase Bank N.A. as Trustee for RAAC 2006RP2 and

GMAC Mortgage, LLC

awilby

THIS LAW FIRM IS ACTING AS A DEBT COLLECTOR AND IS ATTEMPTING TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.



IN THE SUPERIOR COURT FOR THE COUNTY OF DEKALB  
STATE OF GEORGIA

CIVIL ACTION FILE#  
\_\_\_\_\_

Wekesa O. Madzimoyo,

-Plaintiff }

v. }

THE BANK OF NEW YORK }

MELLON TRUST COMPANY (NYBMT),

NA., formerly known as The Bank of New }

York Trust Company, N.A., JP MORGAN }

CHASE BANK, NA, GMAC MORTGAGE, LLC, }

MCCURDY AND CANDLER, LLC

and ANTHONY DEMARLO, Attorney

-Defendants }

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**Opposition to Defendants' McCurdy and Candler's and Anthony  
Demarlo's Motion to Dismiss**

1. Comes Now Plaintiff Wekesa O. Madzimoyo , opposing Defendants

McCurdy and Candler, LLC's and Anthony Demarlo's Motion to Dismiss

Plaintiff's Complaint.

2. Attached is the certified mail return receipts proving that the Defendants had received the Complaint and the Waiver of Service request. (See Exhibit 1.) Pursuant to Code Section 9-11-4 of the Official Code of Georgia Annotated, the purpose of the waiver of service request is to save the Plaintiff the cost of formal service.
3. The Defendants' – McCurdy and Candler's and Demarlo's "Special appearance answers" and their arguments before Judge Michael Hancock (TRO Hearing) demonstrate the Defendants' awareness of the Complaint and all charges and allegations made by the Plaintiff against them.
4. The Plaintiff, Madzimoyo, mistook the Defendants' awareness (return receipt) and response (answer) for their waiver, and now acknowledges that the Defendants have refused to waive service.
5. The DeKalb County Sheriff Department is formally serving the Defendants (See Exhibit 2), and Plaintiff is not opposed to an extension of Discovery, to give the Defendants ample time to respond.
6. The Defendants have already indicated that they do not oppose Consolidation of the two pending actions in which the prior action included formal service:  
*"... the factual and legal issues in the two matters are so integrally related as to make consolidation particularly appropriate for these two cases.*

*Further as Plaintiff has requested consolidation, which Defendants (GMAC, JP Morgan Chase and NY Bank of Mellon Trust) do not oppose, the Court is authorized to consolidate the matters.” (See **Defendants’ Reply Brief in Support of Their Plea of Abatement and Motion to Dismiss and Response To Plaintiff’s Motion to Consolidate**).*

7. Defendants McCurdy and Candler's and Anthony DeMarlo's assertion that the Plaintiff has no standing because Plaintiff has not “tendered the amount to cure the default on the loan prior to seeking relief ...” is baseless because the Plaintiff has steadfastly contended that he is not, nor has ever been, in default.

8. The Plaintiff has steadfastly contended that the Defendants are not the secured creditors and have no standing in the matter or Plaintiff Madzimoyo's mortgage.

9. Nor have the Defendants proven that the Plaintiff is in default or that they indeed have or have ever had any standing to collect any payments from or commence foreclosure proceedings on Plaintiff Madzimoyo's home at 852 Brafferton Place Stone Mountain, GA 30083.

10. When given the opportunity, indeed, when ordered on July 29<sup>th</sup>, 2009 to provide proof of such standing by this Court (“*provide proper evidence of chain of title*”) at a hearing set for August 31, 2009, the Defendants instead



chose to present a fallacious narrative to the Federal District Court (Northern District) claiming Federal Question Jurisdiction in order to avoid this Court's order.

11. Their inventive and fallacious narrative was struck down by the 11th Circuit Court of Appeals in their September 7<sup>th</sup>, 2011 ruling remanding the case back to this Court.

12. Georgia law is clear on this matter: *A Court may enjoin a nonjudicial foreclosure sale in a wrongful foreclosure action where the authority to foreclose is in question.* (Emphasis added) See - Atlanta Dwellings, Inc. v. Wright, 527 S.E. 2<sup>nd</sup> 854,856 (Ga. 2000).

13. It is a matter of public record that the Defendants commenced foreclosure on the subject property on July \_\_\_\_ 2009, while the purported assignment to the foreclosing entity: NY Bank of Mellon Trust, was not executed until Feb \_\_\_\_ seven months later.

14. Although the Defendants claim otherwise, Georgia Courts have already allowed "*A claim of wrongful foreclosure or a power of sale can be asserted even though a debt is in default,*" (Emphasis added) Brown et al v. Freeman; and vice versa., 222 Ga App. 213 (474 SE2d 73 (1996)

15. For the above reasons, the Plaintiff vigorously opposes any motion to dismiss.

Submitted this \_\_\_\_\_ day of \_\_\_\_\_, 2011

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Wekesa O. Madzimoyo  
Pro Se Litigant

852 Brafferton, Place  
Stone Mountain, GA 30083  
404-201-2356

## **CERTIFICATION OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Amended Complaint has been serviced via U.S. Certified Mail to:

Counsel for Defendants:  
McCurdy & Candler, LLC  
Anthony Demarlo, Attorney

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